

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PATRICIA COLE-TINDALL, in her official
capacity as the King County Sheriff and KING
COUNTY, a home rule charter county,

Plaintiffs,

v.

CITY OF BURIEN, a municipal corporation,

Defendant.

NO. 2:24-cv-00325-RAJ

**DEFENDANT CITY OF BURIEN'S
MOTION TO DISMISS PURSUANT TO
FED. R. CIV. P. 12(b)(1)**

Noted for Consideration: May 17, 2024

I. INTRODUCTION AND RELIEF REQUESTED

To remedy the complicated and difficult statewide issue of homelessness while balancing various stakeholders competing needs, the City of Burien (“Burien”) enacted Ordinance 818, later amended into Ordinance 827, and then, on March 4, 2024, enacted Ordinance 832 (the “Ordinance”) to clarify when and where unhoused individuals can camp in public areas—including in front of schools, libraries, and daycares. King County and its sheriff, Patricia Cole-Tindall (together, “King County”) filed suit just days later against Burien seeking a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 that the Ordinance is unconstitutional on its face.

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1 King County’s purported basis for filing this suit is that it, through its police services to
2 Burien, would be responsible for enforcing the Ordinance when it *eventually* becomes effective
3 – enforcement that has never come to pass. The relationship between King County, its police,
4 and Burien is governed by an Interlocal Agreement (“ILA”) which sets forth specific steps to
5 resolve disputes about King County provision of police services to Burien. Most importantly,
6 this includes the referral of all operational disputes to an Oversight Committee before the parties
7 could consider litigation, and this only when the Oversight Committee was unable to resolve a
8 dispute presented. King County refused to engage in the dispute resolution process before filing
9 the instant action.¹

11 Well-established precedent and judicial principles require the Court to dismiss this
12 lawsuit. At the heart of this controversy is simply a breach of contract, governed under the laws
13 of the State of Washington, between two local governments. This Court does not have
14 jurisdiction to adjudicate this case until the contractual dispute resolution process is exhausted,
15 and likely not even then. King County also lacks standing to contest the constitutionality of the
16 Ordinance, which would not be enforced *against* King County, but *by* King County. A
17 government cannot obtain standing and invoke the jurisdiction of a federal court by requesting
18 that court to order it to adhere to the Constitution.

20 King County has not enforced the Ordinance in any way, much less in an unconstitutional
21 manner, and whether they can enforce the Ordinance in a constitutionally appropriate manner
22 remains completely hypothetical. Simply put, this action is not ripe for any adjudication.
23
24

25 ¹ Burien has separately filed a breach of contract suit against Plaintiffs in Washington Superior Court to force Plaintiffs to adhere to their contractual obligations (the “ILA Action”). King County improperly removed the ILA Action to this Court, and that removal is currently the subject of a motion to remand before this same Court.

1 Finally, this Court has no subject matter jurisdiction to render advisory opinions or
2 declaratory judgments about the constitutionality of governmental enactments in the abstract.
3 The judicial power of the federal courts does not reach that far. Federal courts do not have
4 jurisdiction to decide suits brought by a government entity to declare the validity (or invalidity)
5 of its own acts. The Court should therefore dismiss Plaintiffs’ claims pursuant to Fed. R. Civ.
6 P. 12(b)(1).
7

8 **II. FACTUAL BACKGROUND**

9 On March 4, 2024, Burien passed Ordinance No. 832, which amended the existing Burien
10 Municipal Code (“BMC”) 9.85.150 to clarify and enhance its efforts to protect Burien residents,
11 businesses, and property, and to assist and provide clear guidance for the unhoused. *Dkt. #1-5*.
12 The Ordinance is an expansion on an existing prohibition of camping in city parks. The
13 Complaint acknowledges King County has willingly enforced Burien’s ordinance banning
14 camping in city parks since 2007. *Dkt. #1* at 6, ¶22. The Ordinance prohibits individuals from
15 sleeping overnight on public property if a shelter, bed, or treatment facility is available. *Id.* It
16 also prohibits camping within 500 feet of sensitive sites, such as daycares or schools. *Id.* But,
17 as permitted by BMC 9.85.150, a map allocates portions of Burien, including areas of its
18 downtown, for the unhoused to sleep every night if there are no beds available, while protecting
19 schools, libraries, daycare centers, and critical area from the negative secondary effect of rough
20 sleeping.

21 Just days after its enactment, King County filed this suit ostensibly seeking a declaratory
22 judgment “from this Court that Ordinance No. 832 is facially unconstitutional and that King
23 County has not breached the ILA because it imposes no obligation on [the King County Sheriff’s
24 Office] to enforce laws that are facially unconstitutional.” *Dkt. #1* at 3, ¶6. The Complaint
25 asserts the Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), and 28 U.S.C.

1 § 1367 (supplemental). It also asserts the Court has jurisdiction pursuant to the Declaratory
2 Judgment Act, 28 U.S.C. § 2201. The two causes of action seek (1) a declaration that the
3 Ordinance is unconstitutional on its face by violating the Eight Amendment and Fourteenth
4 Amendments of the United States Constitution, and (2) a declaration that King County is not in
5 violation of the ILA for refusing to enforce the Ordinance pending a court determination of the
6 Ordinance’s constitutionality. *Dkt. #1* at 17, ¶¶58 – 60.

7 In communications with Burien, King County admits that the dispute over the Ordinance
8 is an “operational decision.” *Dkt. #1* at 16, ¶54. This is important for two reasons. First, King
9 County admits its sheriff deputies have enforced, since 2007, Burien’s prohibition on camping
10 in city parks, and that “[a]rrests were rarely necessary because campers would voluntarily move
11 to locations in Burien where camping was not prohibited.” *Dkt. #1* at 6, ¶22. Furthermore, King
12 County acknowledges that since 2018, there has been precisely one arrest for camping in a Burien
13 park, which “occurred after multiple warnings and connection to service agencies.” *Id.*

14 Second, disputes about “operational decisions” are subject to specific dispute resolution
15 procedures in the ILA, the pertinent provisions of which follows:

16 16.2 Referral of Unresolved Problems. The City Chief Executive Officer shall
17 refer any police service operational problem, which cannot be resolved, to the King
18 County Sheriff. The Sheriff and the City Chief Executive Officer shall meet as
19 necessary to resolve such issues. Unresolved problems shall be referred to the
20 Oversight Committee.

21 17.1 Oversight Committee. The City and the County agree to establish an
22 Oversight Committee consisting of the chief executive officers, or their designees,
23 o the cities that contract with the County for law enforcement services, the King
24 County Sheriff, one person designated by the County Executive, and one person
25 designated by the chair of the King County Council’s Law, Justice, and Human
Services Committee, or its successor.

17.2.3 If an operational problem or agreement dispute is referred to the
Oversight Committee pursuant to sections 16.2 or 16.3 of this agreement,
the Oversight Committee will meet and attempt to resolve the problem or
dispute. If the Oversight Committee is unable to resolve the problem or

1 dispute, the agreement shall be construed in accordance with the laws of the
2 State of Washington.

3 *Dkt. #1-1* at 14, ¶¶ 16.2, 17.1, 17.2.3.

4 The Complaint details the attempt between King County and Burien’s City Manager (its
5 “chief executive officer” as used in Section 16.2, *supra*) to resolve the operational issues of the
6 Ordinance. *Dkt. #1* at 15 – 15, ¶¶51 – 55. When they could not agree, King County was required
7 to have moved to the next step – referral to the Oversight Committee under Section 16.2 and
8 17.1 – as required by the ILA. The Complaint details Burien’s attempt to comply with this
9 provision. *Dkt. #1* at 1, ¶5 (“The City Manager responded with claims that the Sheriff’s refusal
10 to enforce Ordinance No. 832 was a breach of the ILA and that Burien would be hauling King
11 County before an oversight committee”), ¶51 (Burien would “bring the matter before the ILA
12 oversight committee.”). King County simply refused to comply with the ILA and engage in the
13 oversight committee process.
14

15 While King County alleges “hazards of enforcing an [allegedly] unconstitutional
16 ordinance,” the Complaint contains no allegations that a case or controversy is presently before
17 the Court. *Dkt. #1* at 16, ¶54. King County has yet to enforce the Ordinance against *a single*
18 *person*, and its Sheriff directed her deputies to not enforce the Ordinance. *Dkt. #1* at 15, ¶50 (“I
19 am directing you that we will not enforce this particular section of the Burien Municipal Code”).
20 The Complaint does not allege King County or any of its sheriff’s deputies have ever been found
21 liable, or even been sued for enforcing either the current Ordinance or Burien’s prior camping
22 prohibition measures. And even if they were, the ILA indemnifies King County for precisely
23 this situation:

24 The County does not assume liability or responsibility for or in any way release the
25 City from any liability or responsibility which arises in whole or in part from the
existence or effect of City ordinances, policies, rules or regulations. If any cause,

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1 claim, suit, action or administrative proceeding is commenced in which the
2 enforceability and/or validity of any such City ordinance, policy, rule or regulation
3 is at issue, the City shall defend the same at its whole expense, and, if judgment is
4 entered or damages are awarded against the City, the County, or both, the City shall
5 satisfy the same, including all chargeable costs and reasonable attorney's fees.

6 *Dkt. #1-1*, at 12, ¶12.3.

7 King County concedes that it *will not* enforce the Ordinance until the “constitutionality
8 of the public camping ordinance is resolved.” *Dkt. #1* at 16, ¶54. However, King County’s only
9 allegation in the Complaint is the existence of the Ordinance, and their present self-imposed
10 inability to enforce it. In short, this case is not fit for judicial review and should be dismissed.

11 **III. AUTHORITY AND ARGUMENT**

12 **A. Federal Courts Have Limited Jurisdiction and are Presumed to Lack Jurisdiction**

13 “It is a fundamental principle that federal courts are courts of limited jurisdiction.” *Owen*
14 *Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). A federal court is presumed to lack
15 jurisdiction in a particular case unless the contrary is affirmatively established. *California ex rel.*
16 *younger v. Andrus*, 608 F.2d 1247, 1249 (9th Cir. 1979). When subject-matter jurisdiction is
17 challenged under Rule 12(b)(1), the plaintiff has the burden of proving jurisdiction in order to
18 survive the motion. *Kingman Reef Atoll Investments, L.L.C. v. United States*, 541 F.3d 1189,
19 1197 (9th Cir 2009). Unlike a motion to dismiss for failure to state a claim under Federal Rule
20 of Civil Procedure 12(b)(6), a Rule 12(b)(1) motion can attack the jurisdictional allegations in
21 the plaintiff’s complaint regardless of whether the complaint otherwise sufficiently states a
22 claim. *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989). A challenge to the court’s
23 subject-matter jurisdiction under Rule 12(b)(1) may rely on affidavits or any other evidence
24 properly before the court. *Dreier v. United States*, 106 F.3d 844, 847 (9th Cir. 1996).

25 A motion to dismiss for lack of subject matter jurisdiction may attack the allegations of
the complaint or may be made as a “speaking motion” attacking the existence

1 of subject matter jurisdiction in fact. *Land v. Dollar*, 330 U.S. 731, 735 & n.4 (1947); *Mortensen*
2 *v. First Fed. Sav. & Loan Ass’n*, 549 F.2d 884, 890-92 (3d Cir. 1977); *Exchange Nat’l Bank v.*
3 *Touche Ross & Co.*, 544 F.2d 1126, 1130-31 (2d Cir. 1976). If the jurisdictional issue can be
4 separated from the merits of the case, the judge may consider the evidence presented with respect
5 to the jurisdictional issue and rule on that issue, resolving factual disputes if
6 necessary. *Mortensen*, 549 F.2d at 891.

7 **B. King County Has the Burden to Establish an Actual Case or Controversy Needed**
8 **for Subject Matter Jurisdiction in this Court.**

9 The Complaint alleges this Court has subject matter jurisdiction under the Declaratory
10 Judgment Act, 28 U.S.C. §§ 2201 and 2202. Complaint, Dkt. 1, p. 17, ¶¶58 – 61. The Declaratory
11 Judgment Act states: “In a case of actual controversy within its jurisdiction ... any court of the
12 United States ... may declare the rights and other legal relations of any interested party seeking
13 such declaration, whether or not further relief is or could be sought.” Article III of the
14 Constitution “limits the jurisdiction of federal courts to ‘Cases’ and ‘Controversies.’” *Lujan v.*
15 *Defenders of Wildlife*, 504 U.S. 555, 559 (1992). “The requirement that a case or controversy
16 exist under the Declaratory Judgment Act is ‘identical to Article III’s case or controversy
17 requirement.’” *Principal Life Ins. Co. v. Robinson*, 394 F.3d 665, 669 (9th Cir.
18 2005) (quoting *American States Ins. Co. v. Kearns*, 15 F.3d 142, 143 (9th Cir. 1994)). In this
19 Circuit, courts have “long held that the district court must first inquire whether there is an actual
20 case or controversy within its jurisdiction.” *Id.* (citation omitted). “[I]f the court finds that an
21 actual case or controversy exists, the court must decide whether to exercise its jurisdiction by
22 analyzing the factors set out in *Brillhart v. Excess Ins. Co.*, 316 U.S. 491 (1942) and its
23 progeny.” *Id.* (citation omitted). “The party asserting federal subject matter jurisdiction bears the
24 burden of proving its existence.” *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115,
25 1122 (9th Cir. 2010) (citing *Kokkonen*, 511 U.S. at 377).

1 **C. The Declaratory Judgment Act Does Not Create a Cause of Action and Plaintiffs**
2 **Must Allege a Substantive Claim to Otherwise Support Jurisdiction**

3 The Declaratory Judgment Act is not an independent basis for jurisdiction. *Stock West*,
4 873 F.2d at 1225. “It is well established that the Declaratory Judgment Act does not create an
5 independent cause of action.” *Hummel v. NW Tr. Servs.*, 180 F. Supp. 3d 798, 810 (W.D. Wash.
6 2016) (internal quotation omitted). “As such, in the absence of a substantive cause of action, the
7 Court cannot grant declaratory relief.” *Id.* (citation omitted). Therefore, “[i]n order to be entitled
8 to declaratory relief, [plaintiff] must allege a claim under some substantive law that entitles her
9 to this relief.... Without a valid cause of action or case, [plaintiff] has no claim for declaratory
10 relief.” *Robinson v. Wells Fargo Bank Nat’l Ass’n*, No. C17-0061JLR, 2017 WL 2311662, at *6
11 (W.D. Wash. May 25, 2017). Stated alternatively, “the court cannot grant declaratory relief in
12 the absence of a substantive cause of action.... The Declaratory Judgment Act creates only a
13 remedy, not a cause of action. Plaintiffs might have a claim for declaratory relief if they could
14 properly plead a cause of action that establishes that they have a legal right.... But without such
15 a cause of action, there is no claim for declaratory relief.” *Bisson v. Bank of Am., N.A.*, 919 F.
16 Supp. 2d 1130, 1139 (W.D. Wash. 2013) (internal citations omitted).

17 Here, the Complaint does not allege King County has suffered any injury from the
18 allegedly unconstitutional Ordinance. The Complaint identifies no lawsuit, judgment, verdict,
19 or injunction against King County as a result of their enforcement of the Ordinance – *because*
20 *King County has refused to enforce it since its very enactment*. Even if they had, it is undisputed
21 that the ILA indemnifies King County enforcement of Burien’s ordinances. The only injury
22 alleged is a purported threat not to pay any invoices to King County by Burien. *Dkt #1* at 16,
23 ¶55. King County does not contend Burien has *actually* failed to pay King County for policing
24 services rendered.² Most importantly, however, a failure to pay an invoice under the ILA

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² The Complaint also omits that Burien’s warning that it could not make payments if King County continued to unequivocally refuse to comply with the ILA.

1 constitutes a contractual dispute between two Washington governmental entities, which does not
2 provide a Court an independent basis for federal court subject matter jurisdiction. Any way the
3 dispute is framed, the dispute returns the question of whether the dispute can, and should, be
4 resolved first by the dispute resolution procedures in the ILA.

5 Since the only possible case or controversy in existence is a breach of the ILA, which
6 does not provide subject matter jurisdiction under 28 U.S.C. § 1331, there cannot be
7 supplemental jurisdiction under 28 U.S.C. § 1367. Therefore, this Court does not have an
8 independent basis for jurisdiction to hear this lawsuit. This lawsuit should be dismissed.

9 **D. King County Has the Burden of Demonstrating Standing and Claims that Are**
10 **Ripe for Adjudication**

11 “The Article III case or controversy requirement limits federal courts’ subject matter
12 jurisdiction by requiring, *inter alia*, that plaintiffs have standing and that claims be ‘ripe’ for
13 adjudication.” *Chandler*, 598 F.3d at 1121-22 (citing *Allen v. Wright*, 468 U.S. 737, 750 (1984)).
14 “Because standing and ripeness pertain to federal courts’ subject matter jurisdiction, they are
15 properly raised in a Rule 12(b)(1) motion to dismiss.” *Id.* (citations omitted). “The closely
16 related doctrines of standing and ripeness arise out of the Article III case or controversy
17 requirement and are intended to ‘prevent courts from becoming enmeshed in abstract questions
18 which have not concretely affected the parties.’” *W. Birkenfeld Trust v. Bailey*, 827 F. Supp. 651,
19 663 (E.D. Wash. 1993) (quoting *Pac. Legal Found. v. State Energy Res.*, 659 F.2d 903, 915 (9th
20 Cir. 1981)). Again, “[t]he party invoking the court’s authority has the burden of demonstrating
21 that he or she has standing to bring the action and that the matter is ripe for
22 adjudication.” *Birkenfeld Trust*, 827 F. Supp. at 663.

23 1. **King County Has Not Established and Cannot Establish Standing**

24 In order to satisfy the standing requirement for an Article III “case or controversy,” a
25 plaintiff must show (1) it personally suffered an “injury in fact,” i.e., an invasion of a legally-

1 protected interest which is concrete, particularized, and actual or imminent, not conjectural and
2 hypothetical; (2) that the injury is fairly traceable to the defendant's conduct, and (3) that the
3 injury is likely to be redressed by a favorable decision. *Birkenfeld Trust*, 827 F. Supp. at
4 663 (citing *Lujan*, 504 U.S. at 560-61).

5 a. *The Complaint Does Not Establish King County Suffered an Injury*

6 King County has not alleged, and cannot show, it has suffered an "injury in fact." It is a
7 rule that "'generalized grievances' about the conduct of Government" are insufficient to confer
8 standing to sue, *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 217, 94 S.Ct.
9 2925 (1974), and "the rule that a party 'generally must assert his own legal rights and interests,'"
10 not those "'of third parties,'" *Kowalski v. Tesmer*, 543 U.S. 125, 129, 125 S.Ct. 564 (2004).
11 Here, King County neither suffered an invasion of *its* constitutional rights as a result of the
12 enforcement of an allegedly unconstitutional ordinance, nor has it lost income as a result of its
13 inactions in this instance under the ILA.

14 The Complaint essentially expresses concerns that unspecified unhoused individuals *may*
15 *suffer* an invasion of their constitutional rights as a result of how the Sheriff *might enforce* the
16 Ordinance, so King County should be absolved of their contractual responsibility of enforcing
17 the Ordinance enacted by a democratically elected city council. This is a dispute between a
18 legislative body (Burien's City Council), and an agency of its executive (the sheriff's office).
19 Disputes between Burien's legislature and its agencies are properly resolved through internal
20 processes. Though Burien has delegated part of its executive branch to King County, that
21 delegation is governed by the ILA. In addition, King County does not identify any invasion of
22 its own constitutional rights directly. Lastly, the Complaint identifies no secondary liability
23 brought about by enforcing the Ordinance. For example, King County identifies no §1983 claim
24 brought against any of its deputies as a result of the Ordinance. Since enforcement of the
25 Ordinance is left to King County's sheriff, any injury in fact would be caused *by* King County

1 not to King County. There is no “injury in fact” and so King County has failed to demonstrate
2 standing.

3 b. *The Complaint Establishes that Any Injury is Traceable to King County,*
4 *Not Burien*

5 Responsibility for enforcing the Ordinance falls on King County through its sheriff’s
6 office. Any violation of the constitutional rights of unhoused residents in Burien would therefore
7 fall on King County. However, a litigant cannot “be heard to complain about damage inflicted
8 by its own hand.” *Pennsylvania v. New Jersey*, 426 U.S. 660, 664 (1976) (per curiam) *Lujan*,
9 504 U.S. at 564 n.2 (when “the acts necessary to make the injury happen are at least partly within
10 the plaintiff’s own control,” courts “have insisted that the injury proceed with a high degree of
11 immediacy, so as to reduce the possibility of deciding a case in which no injury would have
12 occurred at all”); *Mendia v. Garcia*, 768 F.3d 1009, 1013 n.1 (9th Cir. 2014) (holding “self-
13 inflicted injury” insufficient to allege “ ‘substantial risk’ that [] future harm would occur”
14 for standing purposes); *Nat’l Family Planning & Reproductive Health Assoc, Inc. v. Gonzales*,
15 468 F.3d 826, 831 (D.C. Cir. 2006) (“We have consistently held that self-inflicted harm doesn’t
16 satisfy the basic requirements for standing. Such harm does not amount to an ‘injury’ cognizable
17 under Article III.”). As the D.C. District stated, “a plaintiff cannot transform a remote risk into
18 a concrete injury merely by taking steps to avoid that risk; to hold otherwise would eliminate the
19 injury-in-fact requirement entirely because plaintiff’s actions are always within plaintiff’s
20 control.” *Food & Water Watch, Inc. v. Vilsack*, 79 F. Supp. 3d 174, 196 (D.D.C. 2015).

21 King County has not, and cannot, demonstrate there are now ways to enforce the
22 Ordinance in a constitutionally acceptable manner, and ultimately any enforcement is dependent
23 on King County’s own actions, not Burien’s. Such self-inflicted harms do not create an injury-
24 in-fact sufficient to create Article III standing.

1 c. *The Complaint Does Not Establish King County Alleged Injury Would*
2 *be Redressed by a Favorable Ruling in this Case.*

3 A plaintiff also cannot satisfy the redressability element if it will suffer the claimed injury
4 even if a court rules in its favor. *Lujan*, 504 U.S. at 562. A favorable ruling for King County
5 would simply require King County to comply with the ILA, which is to cooperate with Burien
6 and participate in the ILA's mandatory Oversight Committee process, a remedy sought by Burien
7 in its own ILA Action. A determination that the parties must abide by their contract would
8 instantly deprive the Court of jurisdiction.

9 2. *King County Cannot Establish a Ripe Dispute*

10 King County's claims should also be dismissed because its claims are not ripe. It is
11 undisputed the Ordinance has yet to be enforced. It is also undisputed that King County has
12 refused to engage with Burien or the Oversight Committee to establish how the Ordinance can
13 be enforced through the mandatory procedures of the Oversight Committee. Ripeness derives
14 from both constitutional limitations on judicial power and prudential reasons for deciding not to
15 exercise jurisdiction. *See Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 57 n.18 (1993); *Thomas*
16 *v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000) "[B]ecause the focus
17 of our ripeness inquiry is primarily temporal in scope, ripeness can be characterized as standing
18 on a timeline." *Id.* at 1138. "A claim is not ripe for adjudication if it rests upon contingent future
19 events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*,
20 523 U.S. 296, 300 (1998) (quotation omitted).

21 a. *The Complaint Does Not Establish a Case or Controversy*

22 "[T]he doctrines of standing and ripeness are closely related, but ripeness requires an
23 additional inquiry into the appropriateness of judicial intervention." (Citing *Pac. Legal*, 659 F.2d
24 at 915). "[T]he appropriate standard for determining ripeness of private party contract disputes
25 is the traditional ripeness standard, namely, whether 'there is a substantial controversy, between

1 parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance
2 of a declaratory judgment.” *Principal Life*, 394 F.3d at 671 (quoting *Maryland Cas. Co. v. Pac.*
3 *Coal & Oil Co.*, 312 U.S. 270, 273 (1941)). Ripeness is “peculiarly a question of timing,
4 designed to prevent the courts, through avoidance of premature adjudication, from entangling
5 themselves in abstract disagreements.” *Thomas*, 220 F.3d at 1138 (citations & quotations
6 omitted). If King County fails to meet its burden to demonstrate this case is prudentially ripe,
7 the Court need not address constitutional standing or ripeness. *See Alaska Right to Life Political*
8 *Action Comm. v. Feldman*, 504 F.3d 840, 849 (9th Cir. 2007).

9 b. *The Complaint Does Not Establish Prudential Ripeness*

10 The lack of ripeness here is particularly strong because King County attacks the
11 Ordinance on its face. Such challenges are “disfavored” not only because they are “contrary to
12 the fundamental principle of judicial restraint” and “threaten to short circuit the democratic
13 process by preventing laws embodying the will of the people from being implemented in a
14 manner consistent with the Constitution,” but also because they “often rest on speculation” and
15 require courts to resolve important legal questions prematurely and without sufficient factual
16 context. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450-51
17 (2008) (citations & quotations omitted).

18 This is true because courts “do not decide constitutional questions in a vacuum.” *Thomas*,
19 220 F.3d at 1141 (quotation omitted); *see also Alaska Right to Life*, 504 F.3d at 849 (reversing
20 district court on prudential ripeness grounds for lack of a “concrete factual situation”). A court
21 should entertain questions regarding the Ordinance’s legality only at the appropriate time, which
22 is most certainly not before the parties have determined how the Ordinance can and will be
23 enforced and before any facts regarding its application to actual unhoused individuals or campers
24 are available.

1 c. *The Complaint Does Not Establish Constitutional Ripeness*

2 Duly enacted laws, including municipal ordinances, are presumptively valid and
3 constitutional. *Heller v. Doe*, 509 U.S. 312, 320 (1993) *Del Monte Dunes at Monterey, Ltd. v.*
4 *City of Monterey*, 920 F.2d 1496, 1508 (9th Cir.1990), *see Stale v. Kirwin*, 165 Wn.2d 818, 825,
5 203 P.3d 1044, 1047 (2009) (“We presume [a municipal] ordinance is valid unless the challenger
6 can prove the ordinance is unconstitutional.”). Consequently, the party challenging an ordinance
7 bears the burden of establishing its unconstitutionality, *see City of Tacoma v. Luvene*, 118 Wn.2d
8 826, 844, 827 P.2d 1374, 1384 (1992), and courts interpret ordinances in a manner that upholds
9 their constitutionality if possible. *See Leonard v. City of Spokane*, 127 Wn.2d 194, 197-98, 897
10 P.2d 358, 360 (1995).

11 As the Ninth Circuit recently explained in an order reversing a preliminary injunction
12 enjoining the enforceability of a municipal ordinance, “litigants mounting a facial challenge to a
13 statute normally ‘must establish that *no set of circumstances* exists under which the [statute]
14 would be valid.’” *Tucson v. City of Seattle*, 91 F.4th 1318, 1327 (9th Cir. 2024), *quoting United*
15 *States v. Hansen*, 599 U.S. 762, 769 (2023). The Ninth Circuit noted that “[t]o justify facial
16 invalidation, a law’s unconstitutional applications must be realistic, not fanciful, and their
17 number must be substantially disproportionate to the statute’s lawful sweep.” *Tucson*, 91 F.4th
18 at 1327 – 28, *quoting United States v. Williams*, 553 U.S. 285, 292 (2008)). The “mere fact that
19 one can conceive of some impermissible applications of a statute is not sufficient to render it
20 susceptible to an overbreadth challenge.” *Tucson*, 91 F.4th at 1328, *citing Members of City*
21 *Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 800 (1984).

22 King County seeks to circumvent this critical step, despite the Complaint acknowledging
23 it has enforced – since 2007 – Burien’s earlier ordinances regarding camping in parks, with only
24 one arrest being made since 2018. King County must therefore demonstrate (1) there is no
25 constitutional manner in which the Ordinance can be applied, something that the Complaint does

1 not even try to do, and (2) that the manner in which the Ordinance is being enforced is
2 unconstitutional, something that King County cannot do, as they cannot and do not allege it is
3 being enforced in an unconstitutional manner. Unable to do either, the Complaint is not
4 constitutionally ripe and should be dismissed.

5 d. Even if the Court Determines the Dispute is Ripe, It Should Decline
6 Jurisdiction

7 Even if the Court concludes there is a ripe dispute, “the Declaratory Judgment Act
8 requires further analysis ... as to whether or not to exercise jurisdiction.” *Principal Life*, 394 F.3d
9 at 672 (citation omitted). A district court’s discretion to hear declaratory judgment actions over
10 which it has jurisdiction is guided by *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491
11 (1942). *Principal Life*, 394 F.3d at 672. “The *Brillhart* factors remain the philosophic touchstone
12 for the district court.” *Gov’t Emps. Ins. Co. v. Dizol*, 133 F.3d 1220, 1225 (9th Cir. 1988).
13 The *Brillhart* factors are non-exclusive and provide that the district court should avoid needless
14 determination of state law issues (here, contractual interpretation of the ILA); discourage
15 litigants from filing declaratory actions as a means of forum shopping; and avoid duplicative
16 litigation. *Id.*; *Principal Life*, 394 F.3d at 672. This declaratory action will not settle any aspects
17 of the alleged *as of yet merely hypothetical* dispute between Burien and King County or serve a
18 useful purpose in clarifying the legal relations at issue.

19 E. The Court Does Not Have Jurisdiction to Render an Advisory Opinion as to the
20 Constitutionality of How It Might Enforce the Ordinance

21 Finally, King County purports to satisfy the case or controversy requirement by seeking
22 a declaration that its interpretation of Ordinance is unconstitutional. Federal courts have
23 uniformly rejected that contention and held that a declaratory judgment suit brought by the
24 government to determine the constitutionality of its own actions does not present a justiciable
25 controversy. *Muskraat v United States*, 219 U.S. 346, 361 (1911); *Missouri v Cuffley*, 112 F.3d
1332, 1337 (1997) (“ A federal court is neither required nor empowered to wade through a

1 quagmire of what-ifs”); *Dixie Electric Cooperative v Alabama Power Co* , 789 F 2d 852, 858
2 (11th Cir 1986) (“A federal court may not, consistent with the Constitution, entertain a
3 proceeding such as this one, that merely seeks validation of a statutory scheme and allows for
4 the adjudication of potential issues that have not actually arisen.”); *International Soc’y for*
5 *Krishna Consciousness v City of Los Angeles*, 611 F.Supp. 315, 318-19 (CD. Cal. 1984) (holding
6 that declaratory action brought by the City of Los Angeles to determine the constitutionality of
7 a regulation restricting First Amendment activities at the Los Angeles airport did not present a
8 case or controversy with the court’s jurisdiction).

9 Since King County has failed to present an actual case or controversy sufficient to allow
10 this Court to exercise jurisdiction, this Court must dismiss this action.

11 **IV. CONCLUSION**

12 For the foregoing reasons, the Court should grant Burien’s Motion to Dismiss this case
13 pursuant to Fed. R. Civ. P. 12(b)(1).

14 DATED this 23rd day of April 2024.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on April 23, 2024, I electronically filed the foregoing with the
3 Clerk of the Court using the CM/ECF system which will send notification of such filing to the
4 following:

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11 Signed at Seattle, Washington this 23rd day of April, 2024.

12 s/Daniel A. Brown
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DEFENDANT CITY OF BURIEN'S MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(b)(1) - 17
NO. 2:24-cv-00325-RAJ

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